

Message Text

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C O N F I D E N T I A L SECTION 1 OF 2 MEXICO 1354

GENEVA PLS PASS LOS TEAM

E.O. 11652: GDS

TAGS: PLOS, EFIS, MX

SUBJECT: INFORMAL DISCUSSIONS ON LOS ARTICLE ON HIGHLY
MIGRATORY SPECIES

1. SUMMARY: U.S. TEAM LEAD BY MOORE AND RIDGWAY, AND INCLUDING BLONDIN, WILLIAMS, HALLMAN AND COLSON MET FOR TWO DAYS OF INFORMAL TALKS WITH MEXICAN DELEGATION LED BY SUBSECRETARY CASTENEDA, AMB. CASTRO Y CASTRO, AND AMB. GONZALEZ DE LEON. INFORMAL UNDERSTANDING WAS REACHED ON MANY OF THE OUTSTANDING ISSUES IN GALINDO-POHL TEXT, BUT THE VOTING PROVISION REMAINS UNRESOLVED. END SUMMARY.

2. U.S. AND MEXICAN TEAMS REVIEWED GALINDO-POHL TEXT. AT END OF DISCUSSIONS, U.S. TEAM AGREED TO PREPARE A PAPER REFLECTING
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AREAS OF INFORMAL AGREEMENT AND DISAGREEMENT, ALONG LINES

OF TEXT PREPARED BY GALINDO-POHL AFTER NEW YORK TUNA MEETINGS.
TEXT FOLLOWS.

3. PARAGRAPH 1: THE COASTAL STATE, IN THE EXERCISE OF THE SOVERIGN RIGHTS RECOGNIZED IN THE PRESENT CONVENTION, WILL REGULATE, WITHIN ITS EXCLUSIVE ECONOMIC ZONE, FISHING FOR THOSE HIGHLY MIGRATORY SPECIES WHICH ARE LISTED IN THE ANNEX, IN ACCORDANCE WITH THE PROVISIONS OF THE PRESENT ARTICLE. (VARIANT B OF GALINDO-POHL TEXT DELETED CONTINGENT ON AGREEMENT ON COASTAL STATE PREFERENCE ARTICLE.)

PARAGRAPH 2: THE COASTAL STATE AND OTHER STATES WHOSE NATIONALS HAVE BEEN FISHING FOR HIGHLY MIGRATORY SPECIES IN THE REGION SHALL COOPERATE THROUGH AN APPROPRIATE INTERNATIONAL ORGANIZATION FOR THE PURPOSE OF ENSURING THE CONSERVATION AND OPTIMUM UTILIZATION OF SUCH SPECIES THROUGHOUT THE REGION. IN REGIONS WHERE NO APPROPRIATE INTERNATIONAL ORGANIZATION EXISTS, COASTAL STATES AND THE OTHER STATES WHOSE NATIONALS HAVE BEEN FISHING FOR THOSE SPECIES IN THE REGION SHALL COOPERATE TO ESTABLISH SUCH AN ORGANIZATION AND PARTICIPATE IN ITS WORK. THE REGIONAL ORGANIZATION MAY COOPERATE WITH OTHER INTERNATIONAL ORGANIZATIONS FOR THE PURPOSE OF CONSERVING THE RESOURCE.

PARAGRAPH 3: COASTAL STATES OF A GEOGRAPHIC OR ECOLOGIC REGION AND STATES WHICH HAVE BEEN FISHING FOR HIGHLY MIGRATORY SPECIES WITHIN THAT REGION SHALL BE MEMBERS OF THE RESPECTIVE REGIONAL ORGANIZATION. ON THE BASIS OF THE BEST SCIENTIFIC EVIDENCE AND OTHER PERTINENT INFORMATION, THE ORGANIZATION SHALL DETERMINE WHEN THE RESOURCE IS FULLY UTILIZED. STATES WHICH HAVE NOT BEEN FISHING FOR HIGHLY MIGRATORY SPECIES IN A REGION MAY PARTICIPATE IN THE FISHERY ONLY WHEN IT IS NOT FULLY UTILIZED, AND SUCH STATES SHALL BE MEMBERS OF THE ORGANIZATION.

PARAGRAPH 4: ON THE BASIS OF THE BEST AVAILABLE SCIENTIFIC EVIDENCE AND OTHER PERTINENT INFORMATION THE ORGANIZATION SHALL FORMULATE MEASURES, THAT SHALL BE AGREED UPON BY THE MEMBER STATES, IN ACCORDANCE WITH THE RESPECTIVE RULES OF PROCEDURE OF THE ORGANIZATION, DESIGNED TO ENSURE THE OBJECTIVES SET OUT IN PARAGRAPH 2.

PARAGRAPH 5: IN FORMULATING SUCH MEASURES, THE ORGANIZATION SHALL TAKE INTO ACCOUNT ALL RELEVANT FACTORS AND CIRCUMSTANCES,
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INCLUDING, INTER ALIA, AN ESTIMATE OF THE FISH POPULATIONS; THEIR MIGRATORY RANGE AND THE DEGREE OF THEIR EXPLOITATION; THE VOLUME OF FISH CAPTURED WITHIN AND BEYOND THE EXCLUSIVE ECONOMIC ZONES OF THE COASTAL STATES; THE NEED TO PREVENT OVER-EXPLOITATION OF THE SPECIES, THE EFFECTS OF THEIR CAPTURE ON ASSOCIATED OR DEPENDENT SPECIES WITH A VIEW TO MAINTAINING OR RESTORING FISH POPULATIONS ABOVE LEVELS AT WHICH THEIR REPRODUCTION MAY BECOME THREATENED; THE

HARVESTING CAPACITY OF STATES FISHING HIGHLY MIGRATORY SPECIES IN THE REGION; THE NEEDS AND POSSIBILITIES FOR DEVELOPMENT OF SUCH HARVESTING CAPACITY BY THE RESPECTIVE COASTAL STATES OR MIXED ENTERPRISES IN WHICH THE STATES PARTICIPATE. MEASURES SHALL ENSURE THAT THE SPECIES ARE NOT ENDANGERED BY OVER-EXPLOITATION AND SHALL BE DESIGNED TO MAINTAIN OR RESTORE POPULATIONS OR HARVESTED SPECIES AT LEVELS WHICH CAN PRODUCE MAXIMUM SUSTAINABLE YIELD, AS QUALIFIED BY RELEVANT ENVIRONMENTAL AND ECONOMIC FACTORS.

(VARIANT B OF PARAGRAPH 4 OF GALINGO-POHL TEXT DELETED CONTINGENT ON AGREEMENT ON COASTAL STATE PREFERENCE ARTICLE.)

PARAGRAPH 6: (VARIANT A - DELETE THIS PARAGRAPH.)

(VARIANT B - THE ORGANIZATION SHALL RECOGNIZE THE PRIORITY OF THE COASTAL STATE IN THE HARVESTING OF HIGHLY MIGRATORY SPECIES IN ITS EXCLUSIVE ECONOMIC ZONE. THE ORGANIZATION IN ADOPTING MEASURES SHALL DETERMINE THE MANNER IN WHICH SUCH PRIORITY SHALL BE REFLECTED. THAT PART OF THE ALLOWABLE CATCH WHICH THE COASTAL STATES DOES NOT HAVE THE CAPACITY TO HARVEST SHALL BE MADE AVAILABLE TO OTHER STATES, IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE ORGANIZATION WHICH TAKE INTO ACCOUNT INTER ALIA NORMAL CATCH AND EXISTING FISHING PATTERNS THROUGHOUT THE REGION.

PARAGRAPH 7: FEES SHALL BE PAID TO THE COASTAL STATE FOR FISH CAUGHT WITHIN ITS ECONOMIC ZONE, AS THE CONDITION FOR ACCESS TO FISHING WITHIN THAT ZONE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE AND THOSE OF THE RESPECTIVE REGIONAL ORGANIZATIONS. THE ORGANIZATIONS SHALL TAKE MEASURES FOR THE ESTABLISHMENT OF REASONABLE UNIFORM FEES TO BE APPLIED IN EACH REGION, TAKING THE VIEWS OF MEMBER STATES INTO ACCOUNT, AND SHALL MAKE APPROPRIATE ARRANGEMENTS WITH THE COASTAL STATES REGARDING THE COLLECTION OF SUCH FEES.

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C O N F I D E N T I A L SECTION 2 OF 2 MEXICO 1354

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PARAGRAPH 8: UNLESS THE MEMBER STATES AGREE ON A DIFFERENT PROCEDURE, THE ADOPTION OF MEASURES BY THE ORGANIZATION SHALL REQUIRE A TWO-THIRDS MAJORITY OF THE STATES PRESENT AND VOTING, (VARIANT A - INCLUDING THE AGREEMENT OF ALL COASTAL STATES OF THE REGION PRESENT AND VOTING. THE ADOPTION OF MEASURES WHICH AFFECT THE EXCLUSIVE ECONOMIC ZONE OF A COASTAL STATE SHALL REQUIRE THE AGREEMENT OF SUCH STATE WITH RESPECT TO SUCH EXCLUSIVE ECONOMIC ZONE. THE ADOPTION OF MEASURES WHICH AFFECT FISHING BEYOND THE ECONOMIC ZONE BY ANY STATE SHALL REQUIRE THE AGREEMENT OF SUCH STATE WITH RESPECT TO FISHING BY SUCH STATE BEYOND THE ECONOMIC ZONE.) (VARIANT B - THE ADOPTION OF MEASURES WHICH AFFECT THE EXCLUSIVE ECONOMIC ZONE OF A COASTAL STATE SHALL REQUIRE THE AGREEMENT OF SUCH STATE.)

PARAGRAPH 9: THE MEMBER STATES OF THE ORGANIZATION SHALL CONFIDENTIAL

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ENSURE THAT THEIR NATIONAL LEGISLATION IS IN AGREEMENT WITH THE MEASURES AGREED ON THROUGH THE ORGANIZATION. THE MEMBER STATES SHALL ALSO ENSURE THAT THEIR NATIONALS COMPLY WITH THE AGREED MEASURES ON FISHING FOR HIGHLY MIGRATORY SPECIES.

PARAGRAPH 10: SHIPS WHICH ARE DULY REGISTERED IN A STATE AND WHICH HAVE THE RIGHT TO FLY ITS FLAG SHALL BE CONSIDERED TO BE NATIONALS OF SUCH STATE FOR THE PURPOSES OF THE PRESENT ARTICLE. STATES MUST EFFECTIVELY EXERCISE THEIR

JURISDICTION AND CONTROL IN ADMINISTRATIVE, TECHNICAL
AND SOCIAL MATTERS OVER SHIPS FLYING THEIR FLAG.

PARAGRAPH 11: IN ACCORDANCE WITH ARTICLE 60, THE COASTAL
STATE SHALL ADOPT THE NECESSARY MEASURES TO ENSURE, WITHIN
ITS EXCLUSIVE ECONOMIC ZONE, COMPLIANCE BY ALL SHIPS WITH
THE APPLICABLE FISHING REGULATIONS. THE MEMBER STATES OF
THE ORGANIZATION WILL AGREE ON EFFECTIVE ARRANGEMENTS FOR THE
ENFORCEMENT, WITH RESPECT TO MEMBERS, OF THE AGREED MEASURES
BEYOND THE EXCLUSIVE ECONOMIC ZONE.

PARAGRAPH 12: (VARIANT A - DELETE THIS PARAGRAPH.) (VARIANT
B - FISHING FOR HIGHLY MIGRATORY SPECIES BEYOND THE EXCLUSIVE
ECONOMIC ZONE SHALL BE SUBJECT TO THE PROVISIONS OF ARTICLES
103 TO 107 AND OF THE PRESENT ARTICLE.)

PARAGRAPH 13: NOTHING IN THE PRESENT CONVENTION SHALL
RESTRICT THE RIGHT OF A COASTAL STATE WITHIN ITS EXCLUSIVE
ECONOMIC ZONE, OR AN INTERNATIONAL ORGANIZATION WITH RESPECT
TO ITS MEMBERS FOR THE STOCK AS A WHOLE, AS APPROPRIATE, TO
PROHIBIT OR LIMIT THE EXPLOITATION OF MARINE MAMMALS. STATES
SHALL COOPERATE EITHER DIRECTLY OR THROUGH APPROPRIATE INTER-
NATIONAL ORGANIZATIONS WITH A VIEW TO THE PROTECTION AND
MANAGEMENT OF MARINE MAMMALS. END OF TEXT.

4. MEXICAN DELEGATION AGREED THAT VARIANT A IN GALINDO-POHL
TEXT PARAGRAPHS 1 AND 4 COULD BE ACCEPTED IF AN ACCEPTABLE
PARAGRAPH ON COASTAL STATE PREFERENCE WAS INCLUDED. THE
U.S. TEAM WAS WILLING TO AGREE TO "HAVE BEEN FISHING" IN
PARAGRAPH 2 OF GALINDO-POHL TEXT IF ACCEPTABLE MEMBERSHIP
PARAGRAPH WAS INCLUDED. MOREOVER, U.S. AGREED TO INCLUDE
THE LAST SENTENCE OF PARAGRAPH 2 IN TEXT ABOVE TO MAKE IT
CLEAR THAT REGIONAL ORGANIZATION WOULD HAVE A MANDATE TO
COOPERATE WITH OTHER INTERNATIONAL CONSERVATION ORGANIZATIONS.

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5. U.S. TEAM SOUGHT INCLUSION OF A PARAGRAPH ON UNIFORM
FEES. THE RESULT IS PARAGRAPH 7 IN TEXT ABOVE, WHICH WAS
AGREED TO BY THE MEXICAN DELEGATION.

6. U.S. TEAM ADDED LANGUAGE "WITH RESPECT TO ITS MEMBERS"
TO MARINE MAMMAL PARAGRAPH TO MEET CONCERN FROM MEXICAN
SIDE REGARDING INTERNATIONAL ORGANIZATIONS OF WHICH THE
COASTAL STATE WAS NOT A MEMBER REGULATING MARINE MAMMALS
WITHIN THE ECONOMIC ZONE.

7. MEXICAN TEAM AGREED THAT VARIANT A IN PARAGRAPH 10 OF
GALINDO-POHL TEXT COULD BE ACCEPTED IF THERE IS ACCEPTABLE
MEMBERSHIP AND VOTING PARAGRAPHS. HOWEVER, MEXICANS SEEMED
RELUCTANT TO DROP CROSS REFERENCE TO HIGH SEAS PROVISIONS
WITHOUT ADDITION OF A FOOTNOTE PROVIDING AS FOLLOWS: "THE
MEXICAN DELEGATION AGREES TO THE DELETION OF PARAGRAPH

10 IN THE UNDERSTANDING THAT AN AGREEMENT WILL BE REACHED ON PARAGRAPHS 2 BIS (MEMBERSHIP) AND 5 (VOTING). FURTHERMORE, IN THE ABSENCE OF AGREEMENT ON CONSERVATION, DISTRIBUTION AND MANAGEMENT MEASURES WITHIN THE FRAMEWORK OF THE REGIONAL INTERNATIONAL ORGANIZATION, EACH STATE MAY ADOPT ANY LEGAL MEASURES WITHIN ITS ECONOMIC ZONE, AND APPLY INTERNATIONALLY AGREED RULES IN THE HIGH SEAS."

8. LINK BETWEEN VOTING PARAGRAPH AND COASTAL STATE PREFERENCE WAS MOST DIFFICULT ASPECT OF THIS NEGOTIATION. U.S. TEAM INDICATED THEIR WILLINGNESS TO ACCEPT PREFERENCE ARTICLE ON PERSONAL BASIS, VARIANT B, PARAGRAPH 6 TEXT ABOVE; IF VARIANT A, PARAGRAPH 8 TEXT ABOVE WAS ACCEPTED. MEXICAN DELEGATION INDICATED SATISFACTION WITH THE ABOVE PREFERENCE PARAGRAPH, WHICH U.S. TEAM HAD WORKED OUT WITH THEM; BUT REFUSED TO ACCEPT U.S. VOTING PARAGRAPH. AS A RESULT, U.S. TEAM DID NOT ACCEPT PREFERENCE PARAGRAPH.

9. U.S. REGARDS VARIANT A OF VOTING PARAGRAPH AS FAIR AND REALISTIC. MEXICAN TEAM EXPLAINED THEIR PROBLEM WITH THAT VARIANT TO BE THAT THEY DID NOT WANT NON-COASTAL STATE BEING ABLE TO DISRUPT THE CONSERVATION PROGRAM BY FAILING TO AGREE TO THE ORGANIZATIONS MEASURES. THEY WOULD LIKE TO SEE THE COASTAL STATES ABLE TO BIND NON-COASTAL STATES BEYOND 200 MILES. U.S. TEAM INDICATED THAT THIS WAS UNREALISTIC. CONFIDENTIAL

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THE MEXICAN DELEGATION INDICATED THAT THEY COULD LIVE WITH A PARAGRAPH ON VOTING WHICH SIMPLY SAID THAT THE MEMBERS OF THE ORGANIZATION WOULD ESTABLISH THE VOTING PROCEDURES OF THE ORGANIZATION. THE U.S. TEAM REFUSED THIS OFFER AS IT WOULD NOT PROTECT U.S. IN OTHER REGIONS, AND IT WOULD GIVE U.S. NOTHING FOR OUR RECOGNITION OF THE COASTAL STATE PREFERENCE. WE DID INDICATE, HOWEVER, WE COULD ACCEPT IT IF MEXICANS WOULD ACCEPT GENERAL OR NO ARTICLE ON COASTAL STATE PREFERENCE AS OPPOSED TO FORTHCOMING ARTICLE WORKED OUT. THIS WAS UNACCEPTABLE TO MEXICAN TEAM.

10. TALKS WERE OPEN, INFORMAL AND FRIENDLY, WITH BOTH SIDES EMPHASIZING THE EXPLORATORY NATURE OF THE TALKS. JOVA

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